

September 30, 2019

Via Hand-Delivery

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RHODE ISLAND ETHICS COMMISSION
40 Fountain Street
Providence, RI 02903

Re: MEMORANDUM IN REPLY TO RESPONDENT, GINA M. RAIMONDO
Complaint No.: 2019-11

On September 17, 2019, Governor Gina Raimondo filed a Response (Raimondo's Response) to the Complaint filed against her. Raimondo requested that the Ethics Commission dismiss the Complaint. Governor Raimondo has basically asserted four arguments in her defense:

- (1) that Donald Sweitzer is not a business associate because he is only an honorary Treasurer of the Democratic Governors Association (DGA) and does not personally engage in Treasurer activities (Raimondo's Response, at p. 15-19);
- (2) if IGT is granted a new twenty-year contract it would have a negligible impact on IGT's stock price, assuming Sweitzer is a IGT shareholder, and no financial impact on Sweitzer as a lobbyist (Raimondo's Response, at p. 19-21);
- (3) there was no violation of R.I.G.L. §36-14-5(d) because legislation authorizing a new twenty year contract with IGT has not become law (Raimondo's Response, at p., 21-22); and
- (4) Raimondo did not engage in actions which were a knowing and willful violation of the Ethics Code (Raimondo's Response, at p. 22).

These arguments are misleading, erroneous, irrelevant, and should therefore be rejected.

Raimondo and Sweitzer are Business Associates at the DGA

Raimondo claims that Sweitzer is not a business associate because he is only an honorary Treasurer of the DGA and does not personally engage in Treasurer activities (Raimondo's Response, at p. 15-19). This is misleading and erroneous. At the outset, Raimondo argues that R.I.G.L. §36-14-2 does not explicitly indicate that political associations are business associations (Raimondo's Response, at p. 15). This is irrelevant. The definition of "business associate" is "a person joined together with another person to achieve a common financial objective."¹ There is no language in this statute that excludes non-profit political associations. The R.I. Supreme Court has declared that "the definition of business associate, as outlined in the statute, appears quite broad."² Also, the Ethics Commission has the "legislative power to enact substantive ethics laws."³ The Ethics Commission has used its authority for years to routinely recognize that a business associate relationship exists in political associations.⁴ Therefore, the definition of business associate in R.I.G.L. §36-14-2 is applicable to a political association.

Next, Raimondo argues that Sweitzer is not in any "leadership positions which permit" him "to affect the financial objectives" of the DGA because Sweitzer's position as DGA Treasurer is an "honorary position" (Raimondo's Response, at p. 1, 11, 16-17). This is also misleading and erroneous. The DGA is a non-profit association organized in the District of Columbia (Raimondo's Response, at p. 7). The Treasurer of the DGA, who is Sweitzer, is one of four managers of the DGA (Raimondo's Response, at p. 11). By statute, a manager "means a person that is responsible, alone or in concert with others, for the management of an unincorporated nonprofit association."⁵ By statute, a "manager shall owe to the unincorporated nonprofit association and to its members the fiduciary duties of loyalty and care" and "shall manage the unincorporated nonprofit association in good faith, in a manner the manager reasonably believes to be in the best interests of the association, and with such care, including reasonable inquiry, as a

¹ R.I.G.L. §36-14-2(3)

² DiPrete v. Morsilli, 635 A.2d 1155, 1163 (R.I. 1994)

³ In re Advisory Opinion to the Governor (Ethics Commission), 612 A.2d 1, 12 (R.I.1992).

⁴ A.O. 2007-45 Michael A. Salvatore, Sr. ; A.O. 2006-50 James W. Archer; A.O. 2004-01 Frank A. Giorgio III; A.O. 2001-72 Steven T. Hartford; A.O. 99-33 Michael C. Fagnoli; A.O. 98-42 Edward O. Boucher.

⁵ D.C. Code Ann. §29-1102(3).

prudent person would reasonably exercise in a similar position and under similar circumstances.”⁶ By law, Sweitzer has a fiduciary relationship to the DGA and a responsibility to manage it in good faith and in prudent manner. By statute a manager position like Treasurer cannot be an honorary position. Furthermore, the written protocols of the DGA require that the Treasurer or the “Treasurer’s designee” to engage in various activities including custody of all DGA funds and this written agreement allows the Treasurer to “exercise these duties” anytime he chooses (Raimondo’s Response at p. 12). Contrary to the assertions of Raimondo, the position of DGA Treasurer is not a ceremonial position like the RI State Police Colonel serving as “an honorary chairman of the Team Spirit Bicycle Tour, a fundraising event to support MADD RI’s youth education and awareness programs.”⁷ It is also not a simple volunteer library position responsible for “collating and organizing materials regarding the history of the Town of Burrillville.”⁸ By statute, which cannot be waived by the DGA, and according to the DGA’s own written agreement, the position of DGA Treasurer is a fiduciary position with important management responsibilities for which the Treasurer is ultimately responsible even if his designee is personally performing the various tasks. Therefore, the position of DGA Treasurer is a “leadership position” because it “permits” Sweitzer “to affect the financial objectives” of the DGA.”⁹

Raimondo goes to great length to argue that Sweitzer is not a business associate because he is a volunteer, and that his responsibilities as Treasurer are handled by his designee (Raimondo’s Response, at p. 11-14, 18-19). This is irrelevant and misleading. To be considered a business associate of an organization, there is no requirement that the individual have a paid position at the organization.¹⁰ Furthermore, Sweitzer may receive financial benefits by being DGA Treasurer in the form of having his travel, airfare, lodging, and/or meals paid for by the DGA. Payment for these types of expenses have been considered compensation for a business associate by the Ethics Commission.¹¹ Also, it is not pertinent if the duties of DGA Treasurer are performed by Sweitzer

⁶ D.C. Code Ann. §29-1119(a) and (b).

⁷ A.O. 98-63, Colonel Edmond S. Culhane, Jr.

⁸ A.O. 2002-4 Margaret L. Dudley.

⁹ A.O. 2001-49 Kevin P. Menard; A.O. 2007-45 Michael A. Salvadore, Sr.

¹⁰ A.O. 2018-30 Gregory Laboissonniere; A.O. 2014-14, Janet. Coit

¹¹ A.O. 2010-27 Michael St. Jean

himself or by his designee, Stephen Hill, for purposes of determining if Sweitzer is a business associate. The relationship between Sweitzer, the Treasurer, and Hill, the Treasurer's designee, is that of a principal-agent relationship. The Ethics Commission has recognized that a principal-agent relationship is itself a business associate relationship.¹² If Sweitzer's designee is engaging in activities that affect the financial objectives of the DGA, then so is Sweitzer because the designee is acting under Sweitzer's authority as Treasurer. To argue that a designee's actions cannot be attributed to the principal would create a significant loophole under the Ethics Code. The Ethics Commission has determined that the revolving door prohibition on appearing before a state agency for one year applied not only to the former state employee, but also to his employees in his firm.¹³ The former state employee could not circumvent the Ethics Code by claiming the prohibition applied to him, but not to his agents. Likewise, the Ethics Code should not be circumvented by Raimondo claiming she only has a business associate relationship with Hill, Sweitzer's designee, at the DGA but not with Sweitzer himself.

Because as Treasurer and through his designee, Sweitzer has a "leadership position" which "permits" him to "to affect the financial objectives" of the DGA, Raimondo argues for a new legal standard for determining if a business associate relationship exists. She argues that an individual must "play an active and meaningful role in the shaping" of the organization's "financial objectives" (Raimondo's Response, at p. 16--19). This is erroneous. This is not the legal standard used by the Ethics Commission applicable to an officer/manager or a director/board member of an organization. Raimondo's recommended approach was only used to determine if an "average shareholder" of a large corporation, CVS, was business associate of CVS.¹⁴ The Ethics Commission did not use this standard for determining whether a business associate relationship existed when it fined Kimberley Gaffett, the Block Island Town Warden, for failing to recuse herself from the negotiation of a contract renewal for an organization, in which her campaign treasurer, Katherine Lewis, served on its board of directors.¹⁵ In fact, what Lewis primarily did as

¹² A.O. 1998-157 David Chenevert

¹³ A.O. 199-125 Todd Chaplin

¹⁴ A.O. 2008-53, Lise J. Gescheidt.

¹⁵ Complaint 2013-3, Kimberley Gaffett

treasurer was to pay campaign expenses which totaled less than \$10,000 over the course of seven years.¹⁶

By comparison, Sweitzer plays a much more important role at the DGA than Lewis did as treasurer for Gaffett's campaign. By statute, which cannot be waived by the DGA, and according to the DGA's own written agreement, the position of DGA Treasurer is fiduciary position with important management responsibilities. According to a form filed with the Internal Revenue Service, Sweitzer is the DGA's Treasurer and his designee, Hill, manages and spends millions of funds for the DGA.¹⁷ Not only is Sweitzer the Treasurer but also the DGA's Chairman of the Finance Council (Raimondo's Response, at p. 13). He raises funds, advises the Finance Director and regularly consults with Raimondo, the Finance Director and Executive Director (Raimondo's Response, at p. 14). Sweitzer is not just someone who once "hosted a party for the purpose of raising campaign funds."¹⁸ It should be emphasized that the financial objectives of a non-profit organization cannot be achieved except through fundraising, and the financial objectives of a non-profit organization are determined, in part, by those responsible for fundraising such as Sweitzer. If the Ethics Commission is uncertain as to whether Sweitzer holds a position at the DGA or plays a role at the DGA that permits him to affect the financial objectives of the DGA, then the Ethics Commission should use its power to compel production of documents and testimony from witnesses through the use of subpoena.¹⁹ The Ethics Commission could require the production of all DGA documents, including all its communications, which to reference Sweitzer since he became Treasurer. Furthermore, Raimondo and Sweitzer should be required to provide all documentation of any communication they had with DGA staff or with each other related to the DGA since Sweitzer became Treasurer. It would be inexplicable if the Ethics Commission dismissed this Complaint on the basis that Sweitzer did not have a leadership position at the DGA that impacted the DGA's financial objectives without at least first using its power to compel the disclosure of relevant information.

¹⁶ Complaint 2013-3, Kimberley Gaffett; Gaffett R.I. Campaign Finance Reports 2006-2013.

¹⁷ DGA Form 8871 filed 3/12/19; Raimondo's Response at 12.

¹⁸ A.O. 99-114 Dorothy Berube

¹⁹ 520-RICR-00-00-3.14; R.I.G.L. §36-14-12(a).

The New Contract with IGT Financially Impacts Sweitzer

Raimondo claims that if IGT is granted a new twenty-year contract it would have a negligible impact on IGT's stock price, assuming Sweitzer is a shareholder of IGT, and no financial impact on Sweitzer as a lobbyist (Raimondo's Response, at p. 19-21). This is erroneous. Raimondo relies on A.O. 2008-53 in which the Commission decided that a member of a Tiverton Zoning Board could vote on a "variance relative to signage and a drive-thru window at a CVS retail store" although the zoning board member owned CVS stock worth about \$18,000. The Commission determined that it was "unlikely that CVS's share price will be impacted by a decision relative to signage and a drive-thru at one of CVS's approximately 6,200 retail stores."²⁰ A billion-dollar contract cannot be compared to a zoning variance for a single store. The current contract between IGT and the State of Rhode Island generates approximately \$50 million in annual revenues for IGT.²¹ The loss of just one state lottery contract had an impact on IGT's earnings. For example, "in its most recent quarterly earnings report, IGT noted that the loss of the Illinois contract" to Camelot Lottery Solutions "contributed to flat North American lottery revenue."²² For the second quarter of 2019, IGT generated only \$4.856 million in net income (that is not a typographical error).²³ Furthermore, over the last two years, IGT has written off \$1.06 billion in goodwill, and the value of its shareholder equity has done down to \$2.379 billion.²⁴ Also, IGT's stock price has declined by about 30 percent over the last year while IGT's a credit rating is considered below investment grade. The Commission has recognized that a financial benefit to a business associate "need not be certain to occur" but only "the probability must be greater than conceivably."²⁵ In its current financial condition, it is almost inconceivable that the loss of a state lottery/slot machine contract which would generate about \$50 million annually for twenty years would not impact IGT's stock price, and therefore financially impact IGT shareholders.

²⁰ A.O. 2008-53, Lise J. Gescheidt.

²¹ "RI Lottery leaders grilled over 20-year IGT contract proposal," WPRI 12 (9/19/19).

²² "Twin River allies with international company to go after IGT's lottery business," ProJo (9/19/19).

²³ <https://www.prnewswire.com/news-releases/international-game-technology-plc-reports-second-quarter-2019-results-300894845.html>

²⁴ <http://ir.igt.com/static-files/b79d2e54-0ddb-4778-836b-18ad04efe024> (see pages 72, and 106).

²⁵ 520-RICR-00-00-1.1.5.

As to the evidence that Sweitzer is a shareholder of IGT, Raimondo does not deny that Sweitzer is a shareholder of IGT; instead she claims a lack of knowledge even after this Complaint was filed (Raimondo's Response at p. 18, Addendum at 1). The Ethics Commission has the power to compel production of documents and testimony from witnesses through the use of subpoena.²⁶ It would be inexcusable if the Ethics Commission dismissed this Complaint on the basis that it is uncertain that Sweitzer is a shareholder of IGT when it has the power to compel him to disclose that information.

In the unlikely event that Sweitzer is not a shareholder of IGT, Sweitzer is still a paid lobbyist for IGT. Even if Sweitzer's current lobbying contract with IGT is not contingent in any way on his success in having the State of Rhode Island enter into a new long-term contract with IGT, the passage or defeat of this unique piece of legislation would still have a financial impact on Sweitzer as a lobbyist for IGT. Raimondo has indicated that unless a new long-term contract with IGT is approved, "100 percent the company is out of here."²⁷ If this occurs, it would mean that Sweitzer would certainly never again be able to lobby for IGT in the State of Rhode Island, and thus he would lose the income he would have received as a Rhode Island lobbyist for IGT in future years. If the legislation passes, Sweitzer will likely continue as a paid Rhode Island lobbyist for IGT because IGT would remain in Rhode Island. Unlike most other pieces of legislation, the passage or defeat of this legislation could determine if a business entity will stay in Rhode Island and continue to pay for lobbyists like Sweitzer to lobby Rhode Island public officials like Raimondo.²⁸ Under these unique circumstances, it is reasonably foreseeable that the success or failure of this effort to get IGT a new long-term contract will financially impact Sweitzer as an IGT lobbyist in the future. If IGT is unable to enter into a new twenty-year one-billion-dollar deal, it will have a reasonably foreseeable impact on IGT shareholders and even Rhode Island IGT lobbyists. Sweitzer is certainly a Rhode Island IGT lobbyist and he is probably an IGT shareholder.

²⁶ 520-RICR-00-00-3.14; R.I.G.L. §36-14-12(a).

²⁷ "Casino PR war 'not a game,'" Cranston Herald (8/8/2019).

²⁸ Raimondo has admitted that "as a lobbyist for IGT" Sweitzer "discussed IGT's presence in Rhode Island", (Raimondo's Response, Addendum at 4).

Raimondo Has Already Used Her Public Office to Benefit Sweitzer and IGT

Raimondo argues that there was no violation of R.I.G.L. §36-14-5(d) because the legislation authorizing a new twenty-year contract with IGT has not become law (Raimondo's Response, at p. 21-22). This argument is entirely erroneous. R.I.G.L. §36-14-5(d) states that a public official cannot "use in *any way* his or her public office ... to obtain financial gain" for "any business associate." The phrase "any way" is a broad phrase and includes negotiation of a contract even for a contract which has not gone into effect. For example, while citing R.I.G.L. §36-14-5(d), the Ethics Commission instructed a state representative, who was a member of the Board of Economic Development Corporation (EDC), that he could "not participate in discussions and meetings with staff members of the EDC to negotiate the terms and conditions of a lease of property" that benefited a business associate.²⁹ The Ethics Commission did not state in this advisory opinion that the representative would only violate R.I.G.L. §36-14-5(d) if in fact the contract he negotiated actually went into effect. Furthermore, the Ethics Code defines a "governmental decision" as one where the public official "obligates a state or municipal agency to a course of action."³⁰ Raimondo did commit her administration to a course of action when she directed her administration, including state agencies, to negotiate a new long-term contract with IGT, and she then subsequently directed her administration, including state agencies, to defend the deal at legislative hearings.³¹ This conduct violates R.I.G.L. §36-14-5(d) because she is using her office to obtain a financial gain for her business associate, Sweitzer.

The logical conclusion of Raimondo's argument is that if a public official unsuccessfully attempted to enter into a contract which benefits a business associate, it does not violate R.I.G.L. §36-14-5(d). Instead, a violation would only occur if the public official actually succeeds into entering into the contract which benefits a business associate. In other words, sponsoring legislation to benefit yourself or a business associate is not a violation, only if that bill becomes law would there be a violation. This kind of interpretation of the Ethics Code is completely

²⁹ A.O. 2000-33, Bruce Long.

³⁰ 520-RICR-00-00-1.1.6.

³¹ "Who told Mattiello IGT wanted a new deal?, Raimondo's treasurer at DGA," Providence Journal (7/9/2019); RI Lottery leaders grilled over 20-year IGT contract proposal, WPRI 12, at (9/19/19).

contrary to the public interest of promoting ethical conduct in government. The wording of the RI Ethics Code, including R.I.G.L. §36-14-5(d), is broad enough to encompass not only successful efforts to engage in unethical conduct by public officials but also any attempt by a public official to engage in unethical conduct.

Raimondo also argues that as Governor she must have some involvement in the legislative approval process including legislation affecting IGT. The fact is the Ethics Code does not prevent Raimondo from her performing her duties as Governor. What the Ethics Code prevents is Raimondo from having a business associate relationship with a lobbyist and probable shareholder of a state vendor. Raimondo can legally perform the duties of Governor and Chairperson of the DGA at the same time, but she cannot ethically perform all the duties of Governor with Sweitzer, a lobbyist and probable shareholder of a state vendor, as her business associate at the DGA.

Raimondo's Conduct Was a Knowing and Willful Violation of the Ethics Code

Raimondo argues that her actions were not a knowing and willful violation of the Ethics Code (Raimondo's Response, at p. 22). This is erroneous. A knowing and willful violation of the Ethics Code can be shown by a "reckless disregard" for the law.³² In this case, Raimondo showed a reckless disregard for the law by never seeking an advisory opinion from the Ethics Commission or even seeking informal guidance from the Ethics Commission staff. In Carmody, a public official was found to have engaged in a knowing and willful violation of the Ethics Code in part because he "knew that the law might apply to him," but he did not "seek out an opinion from the commission".³³ In the past, Raimondo has requested an advisory opinion from the Ethics Commission.³⁴ But, for some reason she did not in relation to Sweitzer. This is inexplicable. Raimondo must have been aware that problematic business associate relationships can develop under the Ethics Code involving organizations focused on political fundraising because she was previously subject to a complaint related to her campaign's fundraising agreement with a city

³² Carmody v. R.I. Conflict of Interest Commission, 509 A.2d 453, 460 (1986).

³³ Id.

³⁴ A.O. 2011-21 Gina Raimondo, A.O. 2013-14 Retirement Board of the Employees' Retirement System.

political committee headed by a state employee.³⁵ Also, in December 2018, when Sweitzer was chosen as Treasurer at the DGA, Sweitzer was still Chairman of IGT Global Solutions Corporation, a major state vendor. Furthermore, in January 2019, Raimondo learned that IGT was interested into entering a new contract with Rhode Island, and knew that Sweitzer was a lobbyist for IGT. During this entire time period, she never sought any guidance from the Ethics Commission formally or informally about her relationship with Sweitzer at the DGA. Perhaps, Raimondo did not want an advisory opinion from the Ethics Commission because she was concerned that the Ethics Commission would have advised of her that she had a conflict of interest involving Sweitzer. Removing Sweitzer as her DGA Treasurer would have resolved this conflict of interest but it would have negatively impacted Raimondo's ability to fundraise for the DGA, and perhaps hindered any national ambitions she may have. Therefore, Raimondo chose to ignore the Ethics Code.

For all these reasons, the Complaint against Raimondo should not be dismissed.

Very truly yours,



Brandon S. Bell
Special Counsel to the RI Republican Party

³⁵ Complaint, Gina Raimondo 2018-1.